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No. 94-2012

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

DAVID B. JACOBS, PETITIONER

v.

GRIEVANCE COMMITTEE
FOR THE EASTERN DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in affirming the district court's suspension of petitioner from practice before the district court.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is reported at 44 F.3d 84. The decision of the Grievance Committee of the district court (Pet. App. A19), and the opinion of the committee of attorneys appointed to advise the Grievance Committee (Pet. App. A20-A36) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 23, 1994. A petition for rehearing was denied on March 10, 1995. Pet. App. A18. The petition

for a writ of certiorari was filed on June 8, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).[1]

STATEMENT

1. a. Petitioner is an attorney currently suspended from practice before the courts of the State of New York. Based upon a complaint from a former client, Patricia Warmhold, in 1990, the Grievance Committee for the Tenth Judicial District of the Appellate Division of the New York State Supreme Court, Second Department, charged petitioner with five counts of professional misconduct. Two counts

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[1] Petitioner also invokes 28 U.S.C. 1257(a) and 2403(b). Pet. 3. Section 1257(a) authorizes review by writ of certiorari of "[f]inal judgments or decrees rendered by the highest court of a State * * * where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution * * * of the United States." Petitioner contends that Section 1257(a) provides a basis for jurisdiction here because his petition draws into question the validity of Rule 4 of the General Rules of the United States District Court for the Eastern District of New York, and Section 90 of the Judiciary Law of the State of New York (McKinney 1983 & Supp. 1995). Pet. 3. Rule 4 of the district court's local rules, however, is not a "statute of any State" within this provision. While Section 90 of the New York Judiciary Law is such a statute, the final judgment of the New York courts upholding petitioner's suspension from the practice of law was entered on July 6, 1993. *In re Jacobs*, 619 N.E.2d 647 (N.Y. 1993). The 90 days within which a petition for review of that decision might have been filed has expired. See Sup. Ct. R. 13.1.

Section 2403(b) does not contain an affirmative grant of jurisdiction, but provides for notification of the appropriate state Attorney General in cases where "the constitutionality of any statute of that State affecting the public interest is drawn in question." 28 U.S.C. 2403(b).

alleged that petitioner charged Warmhold excessive fees, in violation of disciplinary rule (DR) 2-106 of the New York Code of Professional Responsibility.[2] Two counts alleged that petitioner improperly secured from Warmhold, and filed with the Clerk of Nassau County, two confessions of judgment for legal fees. In each instance, petitioner "failed to first provide [Warmhold] with a complete and full explanation of the character, effect, and purpose of the confession of judgment." Pet. App. A23-A24. A fifth count charged that petitioner improperly attempted to limit his malpractice liability to Warmhold. See *id.* at A3, A24.

b. In July, 1990, the Appellate Division authorized the Grievance Committee to begin disciplinary proceedings against petitioner and, in May, 1991, it appointed a special referee to hear evidence and to make a report. Pet. App. A3, A43, A45-A46. The referee held five hearings between June and November, 1991, at which both Warmhold and petitioner testified. *Id.* at A3. In June, 1992, the referee sustained the charges of misconduct and, on March 8, 1993, the Appellate Division, on application of the Grievance Committee, upheld that report. *Id.* at A3, A21-A27; *In re Jacobs*, 594 N.Y.S.2d 794 (1993). The Appellate Division suspended petitioner from the practice of law for a period of three years beginning on April 12, 1993, and directed him to vacate the

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[2] DR 2-106 of the New York Code of Professional Responsibility (subsequently codified as Title 22 of the New York Code, Rules & Regulations) prohibits a lawyer from "enter[ing] into an agreement for, charg[ing,] or collect[ing] an illegal or excessive fee" and sets forth various factors used to determine whether the fee is "excessive." DR 2-106(A) and (B)(1)-(8), 22 N.Y.C.R.R. § 1200.11.

confessions of judgment against Warmhold. Pet. App. A3, A27. In imposing the sanction, the Appellate Division considered three prior disciplinary actions it had taken against petitioner—two in 1986 and one in 1990. *Id.* at A26. The New York Court of Appeals denied petitioner's application for review. *In re Jacobs*, 619 N.E.2d 647 (1993); Pet. App. A38.

2. a. In April, 1993, Chief Judge Thomas Platt of the United States District Court for the Eastern District of New York, as chairman of the Grievance Committee for that court, issued an order to petitioner to show cause why he should not be suspended from practice before that court based on his New York suspension. Pet. App. A3-A4.[3] Judge Platt appointed a committee of three retired judges to act as an advisory panel to assist the Grievance Committee in evaluating discipline against petitioner.[4] Rule 4(g) of the district court's rules authorizes the federal court to impose reciprocal discipline on an

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[3] Rule 4(a) of the Local Rules of the Eastern District of New York authorizes the Chief Judge of the district to "appoint a committee of * * * judges known as the committee on grievances, which under the direction of the chief judge shall have charge of all matters relating to discipline of attorneys." See Pet. App. A14. The district court's Grievance Committee in this case consists of Chief Judge Thomas C. Platt as Chairman, and United States District Judges Leonard D. Wexler, Reena Raggi and Arthur D. Spatt. *Id.* at A9. Rule 4(d) provides for discipline of members of the bar by the court if "any member of the bar * * * has been disciplined by any federal court or by the court of any state, territory, district, commonwealth or possession." Pet. App. A14.

[4] The panel was comprised of former United States District Judge Frederick B. Lacey and former Justices Owen McGivern and Milton Mollen of the Appellate Division of the New York State Supreme Court. See Pet. App. A4, A36.

attorney based upon state discipline "unless the member of the bar concerned establishes by clear and convincing evidence" that the state disciplinary proceeding suffers from an "infirmity of proof of misconduct" or "was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process," or that imposition of discipline would result in "grave injustice." Pet. App. A15. See *Selling* v. *Radford*, 243 U.S. 46 (1917).

b. The advisory panel met with petitioner on several occasions to determine whether an evidentiary hearing would be necessary to permit petitioner to demonstrate either a constitutional infirmity in the state proceedings or a grave injustice from federal discipline. Pet. App. A30-A35. The panel concluded that an evidentiary hearing was not necessary, that petitioner "was afforded a fair hearing before the [New York] [r]eferee, and that there [were] no constitutional infirmities" in the state proceedings. *Id.* at A35-A36. Petitioner sought orders from Chief Judge Platt to enjoin enforcement of the state suspension order and to require the advisory panel to hold an evidentiary hearing. Both requests were denied. *Id.* at A4, A31. On January 31, 1994, the district court's Grievance Committee unanimously adopted the opinion of the advisory panel and suspended petitioner from practice before the district court "during the period of his suspension" by the New York courts. *Id.* at A5, A19.

c. The court of appeals affirmed. Pet. App. A1-A17. Concluding that it had jurisdiction over the appeal (*id.* at A5-A7), the court agreed with the Grievance Committee that "the state proceeding was fair and free of federal constitutional infirmity" (*id.* at A8). It rejected petitioner's claims of Fifth, Sixth, Seventh

and Eighth Amendment violations as based either on the "groundless assertion that an attorney subject to a state disciplinary proceeding enjoys the full panoply of federal constitutional protections that apply to a criminal prosecution" or on the "equally flawed assertion[s]" that the Seventh Amendment applies to state as well as federal actions and that petitioner was entitled to a jury trial with respect to the reasonableness of his fee. *Id.* at A8-A9.

The court also rejected petitioner's procedural challenges to the federal court suspension. The court concluded that petitioner was not entitled to be served with the complaint triggering the federal disciplinary proceedings; that he had received adequate notice of the charges against him; and that the advisory panel's decision not to conduct an evidentiary hearing violated neither due process nor district court Rule 4. Pet. App. A10-A13 (citing *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976)).

On March 10, 1995, the court denied a petition for rehearing with suggestion of rehearing in banc. Pet. App. A18.

ARGUMENT

Petitioner argues that the state disciplinary proceeding is void for lack of subject-matter jurisdiction and that it violated a number of his constitutional rights. Petitioner also asserts procedural and substantive challenges to the Rule 4 procedure under which the federal Grievance Committee suspended him on the basis of the state court's order.

1. Petitioner contends that the "[f]ederal [c]ourts have the power to review State Court disciplinary proceeding[s] and decisions" (Pet. 29). Throughout his petition, petitioner makes various constitutional

and procedural challenges to his suspension by the New York authorities. The issue before the court of appeals, however, was the validity of the federal district court's decision to suspend petitioner. The constitutionality and procedural integrity of the state proceedings are relevant only insofar as they may affect the federal district court's decision to rely on the state court's disciplinary proceedings.[5]

Suspension by a federal court does not automatically flow from suspension by a state court. See *Theard* v. *United States*, 354 U.S. 278, 281 (1957). Nevertheless, in *Selling* v. *Radford*, 243 U.S. 46, 50 (1917), this Court, noting that its "duty [was] not to review the action of the state court of last resort," held that "wrongful personal and professional conduct, wherever committed, operates everywhere and must in the nature of things furnish adequate reason in every jurisdiction for taking away the right to continue to be a member of the Bar in good standing." *Id.* at 49. Based upon such considerations, the Court held that a federal court is entitled to rely upon a

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[5] The decision of the New York authorities suspending petitioner became final on July 6, 1993, when the New York Court of Appeals denied petitioner's application for permission to appeal. *In re Jacobs*, 619 N.E.2d 647. Petitioner did not seek review of that decision by this Court. See note 1, *supra*. The federal district court issued an order to show cause why petitioner should not be suspended from practicing before that court in light of the state court suspension, initiated disciplinary proceedings of its own, and suspended petitioner for a period of three years. "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions." *Atlantic Coast Line R.R.* v. *Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970). See also *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462, 476 (1983); *In re Rosenthal*, 854 F.2d 1187, 1188 (9th Cir. 1988).

State's determination of an attorney's fitness to practice

> unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure from want of notice or opportunity to be heard, was wanting in due process; 2. that there was such an infirmity of proof as to facts found * * * as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3. that some other grave reason exist[s] * * * not to disbar * * * under principles of right and justice.

Id. at 51.

Under *Selling*, federal courts "will, in the absence of some grave reason to the contrary, follow the finding of the state" disciplinary authorities. *In re Isserman*, 345 U.S. 286, 288 (1953); *Theard* v. *United States*, 354 U.S. at 282 (state determination "brings title deeds of high respect"); *In re Reinstatement of Leaf*, 41 F.3d 281, 284 (7th Cir. 1994); *In re Rosenthal*, 854 F.2d 1187, 1188 (9th Cir. 1988).[6] The provisions of Rule 4(g) applied by the district court in this case track the considerations set forth in *Selling*. See Pet. App. A15. Thus, the burden was on petitioner to

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[6] The two cases relied upon by petitioner as establishing the authority of federal courts to "review State Court disciplinary proceeding[s]" acknowledge the controlling standard established by *Selling*. See Pet. 29 (citing *In re Gordon*, 640 F.2d 1143, 1146-1150 (10th Cir. 1981)); *Getty* v. *Reed*, 547 F.2d 971, 977 (6th Cir. 1977) ("relief from state disbarment proceedings can only be had in unusual and limited circumstances—and then only upon proof of federal constitutional violation"; citing *Theard*).

demonstrate "good cause" why the district court erred in relying on the New York court's decision to suspend him. *In re Isserman*, 345 U.S. at 289. Because petitioner failed to make such a showing, the federal district court was entitled to rely on the State's disciplinary decision. Local Rule 4(d).

2. a. Petitioner claims that the federal court may not suspend him from practice because the state disciplinary proceedings were "void for want of subject matter jurisdiction." Petitioner argues that any action in which an attorney's fee is at issue is a suit at common law and, consequently, petitioner is entitled to a trial by jury. He contends that the reasonableness of his fee therefore cannot be the subject of a state disciplinary proceeding. Pet. 9-15.

"Courts have long recognized an inherent authority" over the conduct of attorneys who practice before them, which authority "derives from the lawyer's role as an officer of the court which granted admission." *In re Snyder*, 472 U.S. 634, 643 (1985). See also *Florida Bar* v. *Went For It, Inc.*, No. 94-226 (June 21, 1995), slip op. 7, 17 (substantial state interest in regulating the conduct of state-licensed lawyers). Based upon that inherent authority, courts have also held that they have authority to protect a client from excessive legal fees. See, *e.g.*, *Curry* v. *Del Priore*, 941 F.2d 730, 731-732 (9th Cir. 1991) (citing *Coffelt* v. *Shell*, 577 F.2d 30, 32 (8th Cir. 1978)); *Pfeifer* v. *Sentry Insurance*, 745 F. Supp. 1434, 1443 (E.D. Wis. 1990); *Wunschel Law Firm, P.C.* v. *Clabaugh*, 291 N.W.2d 331, 334 (Iowa 1980).

New York, by statute, has vested the authority over attorney discipline in the Appellate Division of the State Supreme Court. N.Y. Jud. Law § 90(2) (McKinney 1983); Pet. App. A49. The New York Court of

Appeals has recognized that the Appellate Division has exclusive jurisdiction over matters of professional misconduct, *Erie County Water Authority* v. *Western N.Y. Water Co.*, 107 N.E.2d 479, 480-481, cert. denied, 344 U.S. 892 (1952), and has held that the Appellate Division's authority extends to legal fees charged by members of the New York Bar, *Gair* v. *Peck*, 160 N.E.2d 43, 51, 53 (1959) ("The idea is frivolous that disciplinary power over attorneys is unrelated to the exaction of excessive fees."), cert. denied, 361 U.S. 374 (1960). Petitioner's contention that the Appellate Division lacked jurisdiction to determine whether he charged an excessive fee in violation of the New York Code of Professional Responsibility is consequently without merit.[7]

b. Petitioner also claims that Section 90(2) of the New York State Judiciary Law and Section 691.10 of the Rules of the Appellate Division are unconstitutional as applied to petitioner because they violate his "right to contract" with clients. Pet. 12-15. Under those provisions, petitioner is permitted only *quantum meruit* for his past services.

This Court has long recognized that "freedom of contract is a qualified and not an absolute right," and does not provide "immunity from reasonable regulations and prohibitions imposed in the interests of the community." *West Coast Hotel Co.* v. *Parrish*, 300

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[7] Petitioner also errs in claiming that Section 474 of the New York Judiciary Law insulates his fee contract from disciplinary examination. Pet. 15. Section 474 provides that the right of an attorney and client to enter into a fee agreement "is not restrained by law," N.Y. Jud. Law § 474 (McKinney 1983). The New York Court of Appeals rejected a similar contention in *Gair* v. *Peck*, 160 N.E.2d at 53.

U.S. 379, 392 (1937) (quoting *Chicago, B. & Q. R.R.* v. *McGuire*, 219 U.S. 549, 567 (1911)). That is particularly true of attorneys, who are subject to a "complex code of behavior" arising from their obligations, not only to their clients, but also to the system of justice. *In re Snyder*, 472 U.S. at 644 (quoting *In re Bithoney*, 486 F.2d 319, 324 (1st Cir. 1973)). As this Court has recognized:

> "Membership in the bar is a privilege burdened with conditions." [An attorney is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.

In re Snyder, 472 U.S. at 644 (quoting *People ex rel. Karlin* v. *Culkin*, 162 N.E. 487, 489 (N.Y. 1928)). "Freedom of contract" therefore does not insulate petitioner's conduct from disciplinary examination by the New York authorities.

c. Petitioner claims that he has been suspended without a showing that he violated any statute, law, rule, regulation or "recognized or codified standard," in violation of due process. Pet. 27-29. The Appellate Division concluded that petitioner violated the prohibition against an "excessive fee" under the specific standards set forth in DR 2-106 of the New York Code of Professional Responsibility and that he obtained confessions of judgment and a release of liability from his client without properly informing her of the consequences of executing those documents. See, *e.g.*, *Greene* v. *Greene*, 436 N.E.2d 496, 500 (N.Y. 1982) (client must be "fully and fairly informed of the consequences"). In accord with *Selling*, the federal district court properly followed that determination in

the absence of any showing by petitioner of any infirmity of proof, want of due process or other "grave reason" why he should not be suspended from practice.

d. Petitioner argues that the state proceedings violated his rights under the Sixth (Pet. 22-25), Seventh (Pet. 19) and Eighth Amendments (Pet. 25-26), as well as his right to due process (Pet. 24-25).[8] The Sixth Amendment, by its terms, applies only "in * * * criminal prosecution[s]." *United States* v. *Zucker*, 161 U.S. 475, 481 (1896); *United States* v. *Certain Real Property & Premises*, 954 F.2d 29, 35 (2d Cir.), cert. denied, 113 S. Ct. 55 (1992). An attorney disciplinary proceeding is not a criminal prosecution to which the Sixth Amendment applies. *Rosenthal* v. *Justices of the Supreme Court of California*, 910 F.2d 561, 564-565 (9th Cir. 1990), cert. denied, 498 U.S. 1087 (1991); *In re Daley*, 549 F.2d 469, 474-477 & n.6 (7th Cir.), cert. denied, 434 U.S. 829 (1977); *In re Anonymous Attorneys* v. *Bar Ass'n of*

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[8] Petitioner's claims (Pet. 22-25) pertaining to alleged errors committed during the state disciplinary proceedings do not constitute violations of due process. See *Selling* v. *Radford*, 243 U.S. at 51. With respect to the testimony of Dominick Pelle, counsel for complainant's husband, petitioner failed to pursue with the Appellate Division the referee's denial of his request that Pelle be subpoenaed for the state court proceedings. See Pet. 21-22; Pet. App. A32-A33. Petitioner also failed to question the complainant regarding a tape-recorded conversation between them about legal fees, despite the fact that the transcript of the tape was available to petitioner during the hearing before the referee. Pet. 22-23; Pet. App. A31-A32. Finally, petitioner failed to demonstrate how "evidence of collateral acts" involving his representation of complainant in criminal proceedings unfairly led to his suspension. Pet. 23-24.

Erie County, 362 N.E.2d 592, 595 (N.Y. 1977); *Goldman* v. *State Bar*, 570 P.2d 463, 468 (Cal. 1977).

Petitioner claims that he was improperly denied a jury trial in the state proceeding. However, the Seventh Amendment does not apply to state court proceedings. *Minneapolis & St. L. R.R.* v. *Bombolis*, 241 U.S. 211, 217 (1916). See *Ex parte Wall*, 107 U.S. 265, 288 (1882).

Petitioner complains that the Appellate Division improperly considered three prior incidents of discipline in ordering his three-year suspension from practice. Pet. 24-25; Pet. App. A26. Contrary to petitioner's assertion that the consideration of prior disciplinary action constituted "an attempt by the Grievance Committee to further charge the petitioner in this proceeding with prior acts" (Pet. 24), the Appellate Division considered prior disciplinary action only in the context of the appropriate disciplinary sanction. Pet. App. A26. The court did not err in taking petitioner's previous misconduct into account for that purpose. Even in a criminal proceeding, a court's consideration of a defendant's prior convictions in connection with imposition of sentence does not violate due process. See *Williams* v. *New York*, 337 U.S. 241, 245-247, 250-251 (1949); *Nichols* v. *United States*, 114 S. Ct. 1921, 1927-1928 (1994) (courts may consider defendant's past criminal behavior in imposing sentence even if no conviction resulted from that behavior). Indeed, this Court has recently reaffirmed the long-standing rule that "a sentencing judge 'may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.'" *Witte* v. *United States*, 115 S. Ct. 2199, 2205 (1995) (quoting *United*

States v. *Tucker*, 404 U.S. 443, 446 (1972)). Consideration of prior disciplinary sanctions in determining the sanction to be imposed in a civil disciplinary context is clearly constitutionally permissible.

Petitioner also claims that the Appellate Division's consideration of his record of prior discipline violates due process because he did not receive notice that those acts "would be a consideration in determining the sanction or punishment." Pet. 25. In determining the appropriate measure of discipline, the Appellate Division took into consideration a 1986 Letter of Reprimand, a 1986 Letter of Caution, and a 1990 Letter of Admonition. Pet. App. A26. Petitioner has not claimed that he was not the subject of those disciplinary actions, nor has he claimed that those disciplinary letters were not, in fact, issued. Petitioner therefore could not have been prejudiced by the Appellate Division's consideration of those letters.[9]

Petitioner argues that his suspension from practice (and the resulting loss of employment and income) constitutes cruel and unusual punishment in violation of the Eighth Amendment. Pet. 25-26, 28. Suspension from practice, however, is not punishment to which that Amendment would apply. Rather, it is remedial and serves the "purpose of preserving the courts of justice from the official ministration of

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[9] Petitioner has cited *Sexton* v. *Arkansas Supreme Court Comm. on Professional Conduct*, 730 F. Supp. 285 (W.D. Ark. 1990), a case holding that due process required that the "plaintiff be given notice of facts that the prosecutor believes are relevant to fixing punishment, so that he may offer proof that those facts are untrue." *Id.* at 287. The *Sexton* court also held, however, that any error associated with fixing punishment in that case was rendered harmless because the facts considered by the committee on professional conduct were true. *Ibid.*

persons unfit to practice in them." *Ex parte Wall*, 107 U.S. at 288-289; see *In re Isserman*, 345 U.S. at 289.

3. Petitioner's argument that the federal district court committed procedural errors in suspending him from practice is without merit.

a. Petitioner claims that the federal district court did not notify him of the charges against him or provide him an opportunity to be heard in response to those charges. Pet. 16-17, 20-21. As the court of appeals noted, however, the district court's show-cause order to petitioner appended a copy of the March 8, 1993 Opinion and Order of the Appellate Division, which "clearly sets out the charges" against petitioner. Pet. App. A11; see *id.* at A21-A27. Unquestionably, that notice was "of such nature as reasonably to convey the required information." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

b. Petitioner also claims that he was never served with "the Complaint" that would trigger the federal disciplinary proceedings, as required by Rule 4(i) of the district court's rules. Pet. 17, 20. As the court of appeals noted, however, Rule 4 does not require that a copy of the complaint be served on petitioner. Pet. App. A10-A11. In this case, the "complaint" was the certified copy of the Opinion and Order of the Appellate Division suspending petitioner. The federal court forwarded a copy of that Order to petitioner along with the federal court's show-cause order. *Id.* at A11. Neither the Constitution nor the district court's rules require additional notice of the charges to petitioner. *Id.* at A11, A16.

c. Petitioner claims, Pet. 10, 16-17, that he was entitled to a *de novo* evidentiary hearing prior to

the imposition of discipline by the federal court. Following *Selling*, however, courts have generally held that attorneys are not entitled to a *de novo* evidentiary hearing before a federal court following state discipline consistent with due process. *In re Rosenthal*, 854 F.2d at 1188; *In re Jafree*, 759 F.2d 604, 605 n.1, 607 n.4 (7th Cir. 1985). Nor, as the court of appeals correctly noted, does Rule 4(i) require a full evidentiary hearing. See Pet. App. A11, A16. In addition, contrary to his assertion that he has been afforded no "opportunity to be heard," petitioner had several meetings as well as a "formal hearing" before the advisory panel, during which the panel gave petitioner opportunities to demonstrate that an evidentiary hearing would be necessary to reveal an infirmity of proof, a want of due process in the state proceedings, or a risk of grave injustice from suspending petitioner on the basis of his state suspension. *Id.* at A13, A30-A31.

Those federal proceedings also fully comported with any requirement of due process under the Fifth Amendment. See *Ex parte Wall*, 107 U.S. at 288-289. The court of appeals properly analyzed the relevant public and private interests involved under *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976), and correctly held that the denial of a full federal evidentiary hearing did not violate petitioner's due process rights, given the low risk of an erroneous deprivation of petitioner's interest in practicing law and the important public interest in not expending judicial resources on a federal proceeding that would largely duplicate the prior state proceeding. Pet. App. A12-A13.

d. Finally, petitioner contends that the federal proceedings violated his right to confrontation and

cross-examination under the Sixth Amendment (Pet. 21-22), his right to a jury trial in violation of the Seventh Amendment (Pet. 16, 19), and the Eighth Amendment's prohibition of cruel and unusual punishment (Pet. 28). As noted above, the Sixth Amendment applies only to criminal proceedings. A disciplinary proceeding is not a suit at common law and does not come within the purview of the Seventh Amendment. Nor does suspension from the practice of law constitute punishment within the meaning of the Eighth Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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